IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 877 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBHABEN RATNABHAI & 4 - Appellant(s)
Versus
BRAHMIN NARANBHAI RAGHUBHAI & 2 - Defendant(s)

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Appearance :
MR RR TRIVEDI for Appellant(s) : 1 - 5.
RULE SERVED for Defendant(s) : 1 - 3.
MR SHALIN N MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 29/01/2007

ORAL JUDGMENT

The appellants are the original claimants. They have filed this appeal for seeking enhancement of the compensation awarded to them by the

Motor Accident Claims Tribunal [Special], Rajkot District at Gondal dated 01/02/1989 made in M.A.C. Petition No. 155/1987. The appellants have been awarded a sum of Rs.70,000/- together with interest at the rate of 9% p a from the date of application till the deposit of the amount in the Tribunal. It appears that the Tribunal has missed to award costs to the appellants.

2. The appellants have preferred this claim petition for obtaining compensation for the death of one Ratnabhai Premjibhai who died in a vehicular accident which occurred on 26/2/1985 at about 12.00 noon in the Sim of Charan Samadhiyala village. On that day deceased was sitting as a pillion rider on motor bike and Laxmichand Virsinh was driving the motor bike, who also died in the said accident and they were going from Bordi Samadhiyala to Thana Galol. At that time a truck bearing registration No. GAP 4962 came from the opposite direction, it dashed against the motor bike and as a result of the same, deceased Ratnabhai sustained serious injuries; whereas Laxmichand died on the spot. Ratnabhai was removed to Civil Hospital at Jetpur where he died during treatment. The appellants, therefore, claimed Rs.1 lac by way of compensation. The claim was resisted by original opponents who are the present respondents, who appeared to have filed joint written statement at Exh. 12 as reflected from the narration of facts made by the Tribunal. They have denied the averments made in the petition. However, it is further averred that respondent no. 3 – Insurance Company had insured vehicle bearing registration

No. GTP 4962 and not vehicle bearing registration No. GAP 4962 and, therefore, it was not the liability of the insurance company to satisfy the award. In the alternative it was pleaded that accident occurred due to rash and negligent driving of the driver of the motor bike and opponent no. 1 was not responsible for the accident.

2.1. The parties led evidence before the Tribunal, oral as well as documentary. The Tribunal, on the basis of the said material, arrived at a conclusion that the accident occurred due to negligence of respondent no. 1. The Tribunal, however, held that respondent no. 1 was negligent to the extent of 80%; whereas driver of the motor bike was negligent to the extent of 20%. It also determined the compensation at Rs.70,000/- and awarded interest at the rate of 9% p a. So far as the costs is concerned, it has stated in the answer to issue no. 4 that the appellants are entitled to receive compensation together with interest and proportionate costs. However, in the operative portion of the order it has missed to state so.

3. Mr. Mukesh Dave, learned advocate appearing for the appellants has submitted that the Tribunal has erred in deducting 20% from the amount assessed by it on the ground that the driver of the motor bike was negligent to the extent of 20%. He has further submitted that the compensation assessed by the Tribunal is on lower side.

3.1. As against that, Mr. Shalin Mehta, learned advocate appearing for the Insurance Company has supported the judgment and has submitted that there is no need to disturb the findings given by the Tribunal, by this Court.

4. So far as the aspect of negligence is concerned, the Tribunal has adequately dealt with it in its judgment. However, in para. 9 the Tribunal has clearly recorded the finding that the appellants have, by leading cogent and reliable evidence, established that it was negligence of the truck driver which caused the accident and the other-side had failed to establish any negligence on the part of motor bike driver. However, keeping in view the alternative submission made by the learned advocate for the appellants, it has held the driver of motor bike negligent to the extent of 20%. Mr. Dave has taken me through the relevant discussion and has submitted that nowhere the Tribunal has assigned any reason based on the evidence why it has held driver of motor bike contributory negligent to the extent of 20%. Merely because, in the alternative, the submission was made by the learned advocate that if the Tribunal arrived at conclusion holding the driver of motor bike also guilty of causing accident, it should be at 20%. The Tribunal cannot give its finding on such submission alone. It has to apply its mind to evidence and give cogent reasons for giving such finding. That has not been done. On the contrary, the foregoing discussion clearly showed that the Tribunal had held the truck driver

i.e., respondent no. 1 solely responsible for the negligence. In view of the same, the finding with regard to 20% negligence of the deceased driver of motor bike is quashed and set aside.

4.1. So far as the quantum of compensation is concerned, the Tribunal has considered the relevant aspects for determining just compensation. It has been held by the Tribunal that deceased Ratnabhai was earning Rs.600/- per month and after deducting 1/3rd from the said amount for personal expenses, the loss of dependency benefit has been determined by the Tribunal at Rs.400/- per month and Rs.4,800/- per year. The Tribunal has applied multiplier of 15 years and has held that loss of dependency benefit would work out to Rs.70,000/-. However, the Tribunal has missed the aspect that the income of the deceased would not have remained static and it would have increased with the passage of time. If the prospective income is to be worked out, the formula applied in the case of Ritaben alias Vanitaben wd/o. Dipakbhai Haribhai v/s. Ahmedabad Municipal Transport Service reported in 1999 (1) G.L.R. p. 388, has to be kept in view. That would bring the loss of prospective income to Rs.900/- per month and deducting 1/3rd from the said amount for personal expenses, the loss of dependency benefit would come to Rs.675/- per month and Rs.8,100/- per year and applying multiplier of 15, the amount comes to Rs.1,21,500/-. However, the claimants before the Tribunal have made a claim of Rs.1 lac. In view of the same, the appellants are entitled to get entire amount claimed by

them together with interest at the rate of 9% p a from the date of application till realization and proportionate costs. Hence, this appeal is allowed with costs.

Other amounts awarded under different heads appear to be just and proper and hence no interference is required.

Registry to retransmit R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.